IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1078 of 1998
IN
SPECIAL CRIMINAL APPLICATION No 399 of 1998
with
MISC. CRIMINAL APPLICATION No 3664 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and Sd/-

MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

YUNIS AHMED MAMAD

Versus

STATE OF GUJARAT

Appearance:

MR AR MAJMUDAR for Appellant

PUBLIC PROSECUTOR for Respondent No. 1

UNSERVED-REFUSED (N) for Respondent No. 2

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.S.SHAH

Date of decision: 05/11/98

ORAL JUDGEMENT

(Per: M.S.Shah, J.)

This appeal under Clause 15 of the Letters Patent is filed against the judgment and order dated 4th August, 1998 passed by the learned Single Judge in Special Criminal Application No.399 of 1998 rejecting the appellant's petition against the judgment and order dated 31st March, 1998 passed by the learned Sessions Judge, Baroda in Criminal Forest Appeal No.8 of 1997.

2. The appellant is the owner of truck bearing Registration No.GJ-16-T-7860 (hereinafter referred to as the truck). On 22nd February, 1997 upon the truck being intercepted by the Range Forest Officer, the driver and the person accompanying him fled away from the scene. The Range Forest Officer found that the truck was transporting 346 pieces of freshly-cut teakwood admeasuring 6.5 cubic metres hidden under the tarpaulin. The goods found to be belonging to one Nasir Abdul Sattar were forest-produce being transported without pass or permit. Hence, by his order dated 22nd May, 1997 the Deputy Conservator of Forest held that the goods in question were forest-produce which were being transported without pass or permit. The truck in question was, therefore, ordered to be confiscated.

3. The appellant challenged the aforesaid order before the learned Sessions Judge, Baroda, who confirmed the finding of the Deputy Conservator of Forest and held that the goods in question were forest-produce being transported without pass or permit but, after considering the value of the goods being transported and the value of the truck, modified the order of the Deputy Conservator of Forest to the effect that the appellant shall pay a penalty of rupees one lakh and upon payment of such penalty to the Deputy Conservator of Forest, the said officer shall release the appellant's truck.

4. Aggrieved by the aforesaid order of the learned Sessions Judge, Baroda, the appellant filed Special Criminal Application No.399 of 1998. After hearing the learned Counsel for the appellant, the learned single Judge was pleased to dismiss the petition, hence the present appeal.

5. In view of the provisions of Clause 15 of the Letters Patent, it is doubtful whether the present appeal can be entertained. However, since there is no substance in the appeal as far as the case on merits is concerned,

we are not expressing any opinion on the question of maintainability of the appeal.

6. The learned Counsel for the appellant has raised the following contentions:

(1) That the appellant was not involved in any forest offence inasmuch as the appellant had no knowledge that the goods in question were being transported in violation of the provisions of the Indian Forest Act, 1927. Hence, the learned Sessions Judge and the learned Single Judge ought to have passed an order directing the Deputy Conservator of Forest to release the appellant's truck without any condition;

(2) That the learned Sessions Judge had no jurisdiction to impose any penalty; and

(3) That in any view of the matter, the amount of penalty of rupees one lakh was highly excessive which was required to be reduced.

7. As far as the first contention is concerned, the learned Counsel for the appellant has submitted that the very fact that the learned Sessions Judge has given his finding that the order of confiscation of the truck was illegal, necessarily constituted a finding that the appellant was not involved in any forest offence and that the appellant had not committed breach of any of the provisions of the Indian Forest Act, 1927.

8. The contention urged on behalf of the appellant is misconceived because no such contention appears to have been raised before the learned Sessions Judge. On the contrary, it was conceded before the learned Sessions Judge that the forest-produce in question was being illegally transported in the appellant's truck. In fact, it was the contention urged on behalf of the appellant himself before the learned Sessions Judge that, in the case of STATE OF GUJARAT v. SHANTILAL MANSUKHLAL MISTRY reported in 1995 (1) Gujarat Law Reporter 860, this Court has held that a forest officer was not bound to confiscate a truck and that the forest officer has discretion to decide whether to confiscate the truck or to pass any other order. In the aforesaid case, teakwood worth Rs.4000/- was carried in a matador tempo and the forest officer passed an order for confiscation of the truck. The learned Sessions Judge, in that case, substituted the said order by imposing penalty of Rs.5,000/- on the owner of the vehicle. In the special

criminal application filed by the State of Gujarat challenging the said order, this court, after examining the provisions of Section 61-A and Section 61-D of the Indian Forest Act, 1927, held that since the forest officer has been conferred with the discretionary power for confiscation of the property seized together with the vehicle used in committing such offence, the officer is not under any compulsion to confiscate the vehicle, but he will take into consideration all the relevant facts like value of the forest-produce as well as the vehicle and the background and the mode in which the offence was committed, and that is why the Sessions Judge is empowered under Section 61-D of the Act to confirm, modify or annul the order of the authorised officer. The latitude given to the authorised officer is subject to the appeal before the Sessions Judge who would also have a similar latitude in examining all the relevant facts and in confirming or modifying or annulling the order of the authorised officer. That is really the essence of the jurisdiction of the appellate court.

9. It was in view of the aforesaid principle that in the instant case the learned Sessions Judge substituted the order of confiscation by imposing a penalty of rupees one lakh. The learned Sessions Judge did not give any finding that the appellant had not committed breach of any of the provisions of the Act nor that the appellant had taken reasonable care nor that the truck was used in carrying forest goods without knowledge or connivance of the appellant; nor did the learned Sessions Judge give any finding that the appellant and his agent had taken all reasonable and necessary precautions against such use. The provisions of Section 61-B are relevant in this behalf and are required to be quoted hereinbelow:

"61-B Issue of show-cause notice before confiscation under Section 61-A:- (1) No order confiscating any forest-produce or tools, ropes, chains, boats, vehicles or cattle shall be made under Section 61-A except after notice in writing to the person from whom it is seized informing him of the grounds on which it is proposed to confiscate it and considering his objections, if any;

Provided that no order confiscating a motor vehicle shall be made except after giving notice in writing to the registered owner thereof, if in the opinion of the authorised officer it is practicable to do so and considering his objections, if any,

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any tool, rope, chain, boat, vehicle or cattle shall be made under Section 61-A if the owner of the tool, rope, chain, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying forest-produce without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, rope, chain, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use". (emphasis supplied).

10. In view of the above statutory provisions, it is clear that the burden of proof is cast on the owner, agent and driver of the vehicle. In the facts of the present case, the appellant did not discharge that burden. In fact, the appellant's own statement indicates that the appellant was shown a pass of the year 1994 for transporting the goods in question, although the truck was taken on hire for the trip on 22nd February, 1997. The appellant ought to have inquired as to why a forest-produce pass of 1994 is being used for transporting the wood in February 1997. Thus, it is clear that the appellant did not take all reasonable and necessary precautions against use of his truck for transport of forest-produce in an unlawful manner.

11. In view of the above factual backdrop, the reliance placed by the learned Counsel for the appellant on the decision of this court in the case of NAVINCHANDRA K. CHAVDA v. RANGE FOREST OFFICER reported in 1993 (1) Gujarat Law Reporter 948 is of no avail. In that case, the owner of the vehicle had entrusted the driver for regular and lawful transport of goods and it was the driver who had diverted the vehicle for its unlawful use without the knowledge or connivance of the owner and in the facts of that case it was held that the owner of the vehicle could not be said to have foreseen such an unlawful use and that the driver had obviously acted beyond his authority. In the facts of the present case, it is clear that the appellant (owner of the truck) himself had allowed the hirer of the truck to transport forest-produce in February 1997 on the basis of pass issued in the year 1994.

So also the reliance placed by the learned Counsel on the decision of the Supreme Court in the case of JAINARAIN SINGH v. STATE OF MADHYA PRADESH reported

in AIR 1973 SUPREME COURT 2543 does not carry the appellant's case any further. In that case, the vehicle involved was a private car. The owner of the car was not present in the car at the time when the contraband ganja was recovered therefrom and the court found that the owner of the car could not be held responsible for sending the ganja in the car merely because the car belonged to him specially when one of the occupants of the car admitted that the ganja belonged to him. It was also the finding in that case that there was nothing to show that the owner of the car should have come to know that ganja was being transported in his car on that day. Apart from the fact that the vehicle in that case was a private car and not a public carrier, unlike in the instant case, the statutory provisions in the instant case particularly Section 61-B of the Indian Forest Act, 1927 quoted above, clearly require the owner of the vehicle and his agent to take all reasonable and necessary precautions against use of the vehicle for carrying forest-produce in violation of law.

12. As already mentioned above, and it was also the case of the appellant before the learned Sessions Judge that, instead of passing an order for confiscation, the learned Sessions Judge passed the order of penalty looking to the value of the forest-produce and the value of the truck. As already held by this court in the case of SHANTILAL MANSUKHLAL MISTRY (supra), it was open to the learned Sessions Judge to pass an order imposing penalty in substitution of the order of confiscation, after taking into consideration all the relevant facts and circumstances of the case. The learned Sessions Judge did take into consideration that the value of the forest-produce in question was Rs.1,34,285/- and the value of the truck was Rs.3,25,000/-. Since there was no finding that the forest-produce was being transported in the appellant's truck in violation of law with the knowledge or connivance of the appellant for such violation, the learned Sessions Judge held that confiscation of the truck worth Rs.3,25,000/- was not just and proper and, therefore, penalty of rupees one lakh was imposed.

In this connection, the learned Counsel's contention that the said amount was excessive cannot be accepted. The order of confiscation passed by the Deputy Conservator of Forest would have resulted into loss of the truck worth Rs.3,25,000/-. The learned Sessions Judge, however, substituted the said order and imposed penalty of only rupees one lakh. The discretionary order passed by the learned Sessions Judge cannot be said to be

perverse. Hence the learned single Judge did not commit any error in not interfering with the said order of the learned Sessions Judge.

13. It is, therefore, clear that there is no substance in any of the contentions urged on behalf of the appellant. The learned single Judge was, therefore, right in not interfering with the order of the learned Sessions Judge.

14. In view of the above discussion, the appeal deserves to be dismissed and is hereby accordingly summarily dismissed.

15. Since the appeal is dismissed, the criminal application for interim relief does not survive and is disposed of accordingly.

(KMG Thilake)
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